IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1804 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RUPESHKUMAR JAGDISHBHAI THAPA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1804 of 2002

MS BANNA DATTA for MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondents No. 1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 14-10-2001 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner, Ms.Banna Datta for Mr.A.R.Shaikh and learned AGP for the State. Also perused the material on record. She has mainly argued that the detaining authority has relied upon a solitary case registered against the petitioner being Prohi. C.R.No.719 of 2001 registered at Rander Police Station on 2-8-2001. She has raised the further contention regarding the representation. According to her, representation dated 28-1-2002 made by the petitioner has been rejected by the authority on 5-2-2002 and same has been communicated to him on 14-2-2002 and hence, there is a delay in deciding and communicating the same to detenu. In this connection, she has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

She has further contended that there is a delay of two and half months in passing the order as the offence has

been registered on 2-8-2001 whereas the order of detention has been passed on 14-10-2001. In this connection, she has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the solitary offence registered against the petitioner was dated 2-8-2001 and order of detention was passed on 14-10-2001 based on this offence and hence, there is a delay in passing the order. It is to be noted that the delay in passing the detention order as also the delay in deciding the representation and communicating the same to the detenu have not been satisfactorily explained by the authority. Therefore, in view of the aforesaid judgments relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 14-10-2001 passed against the detenu is hereby quashed and set aside. The detenu Rupeshkumar Jagdishbhai Thapa is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.Dholakia,J.)

radhan/